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Investors Beware: How California Municipalities Get Away With Defrauding Investors After Nuveen Municipal High Income Opportunity Fund v. City of Alameda

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**INVESTORS BEWARE: HOW CALIFORNIA
MUNICIPALITIES GET AWAY WITH
DEFRAUDING INVESTORS AFTER *NUVEEN
MUNICIPAL HIGH INCOME OPPORTUNITY
FUND v. CITY OF ALAMEDA***

*Allan Gustin**

I. INTRODUCTION

The first blue-sky laws were enacted in 1911 in the state of Kansas.¹ Explanations vary as to how the laws earned their “blue-sky” name.² Some suggest that the purpose behind these statutes was to address such “speculative schemes which [had] no more basis than so many feet of blue sky.”³ Others suggest that the Kansas legislature created these laws in fear of “fast-talking eastern industrialists selling everything including the blue sky.”⁴ One way or another, the name stuck, and by 1933 at least forty-eight jurisdictions had enacted blue-sky statutes.⁵

In 1917, California enacted its first blue-sky laws, and except for minor modifications, these laws remained the basis of its securities regulation until 1968.⁶ In 1968, California consolidated its blue-sky

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1. LOUIS LOSS ET AL., SECURITIES REGULATION 53 (4th ed. 2006).

2. THOMAS LEE HAZEN, TREATISE ON THE LAW OF SECURITIES REGULATION § 8.1, at 490–92 (3d ed. 1995).

3. Hall v. Geiger-Jones Co., 242 U.S. 539, 550 (1917).

4. HAZEN, *supra* note 2, at 491–92.

5. LOSS, *supra* note 1, at 58.

6. 9 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW § 401 (10th ed. 2012).

laws when it passed the California Corporate Securities Act of 1968.⁷ Among the Corporate Securities Act's provisions was a prohibition against misrepresentations made in the course of buying or selling securities.⁸ While the exact scope of the term "securities" is still debated, it is clear that municipal bonds fall within its meaning.⁹ Municipal bonds are debt securities issued by states, cities, counties, and other government entities to finance capital projects including building schools, highways, and sewer systems.¹⁰

To encourage investing in municipal bonds, municipalities give investors several benefits in return for their investment.¹¹ Most municipal bond interest payments are exempt from federal income tax.¹² These bonds may also be exempt from state and local taxes on residents in the state where the bond is issued.¹³ As a result of these tax benefits, interest on municipal bonds is usually lower than on taxable fixed-income securities.¹⁴

While several types of municipal bonds are available for investment, the two most common types of municipal bonds are general obligation bonds and revenue bonds.¹⁵ Generally, debt service is a relatively small portion of most governments' budgets.¹⁶ However, a state's reliance on deficit financing can lead to lower credit ratings, which is the case for states such as California, Illinois, and Arizona.¹⁷

In September 2013, the Ninth Circuit explored the intersection between the California Corporate Securities Act of 1968 and the Government Tort Claims Act—that is, the act that grants municipalities sovereign immunity from lawsuits.¹⁸ Section 25400 of the Corporate Securities Act, together with section 25013, held municipalities liable for misrepresentations made in the sale of a

7. *Id.*

8. CAL. CORP. CODE § 25400 (West 2014).

9. CAL. CORP. CODE § 25019 (West 2001).

10. Rabah Arezki et al., *Municipal Fallout*, 48 FIN. & DEV. 34, 35 (2011), available at <http://www.imf.org/external/pubs/ft/fandd/2011/09/arezki.htm>.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *See* Nuveen Mun. High Income Opportunity Fund v. City of Alameda, 730 F.3d 1111 (9th Cir. 2013).

security, but section 818.2 granted immunity to public entities for the misrepresentations of their employees.¹⁹ Nuveen Municipal High Income Opportunity Fund, Nuveen High Yield Municipal Bond Fund, and Pacific Specialty Insurance Company (collectively, “Nuveen”) sued the City of Alameda and Alameda Power and Telecom (APT) for alleged misrepresentations made in association with the sale of municipal bonds.²⁰ The Court held that absent a clear indication of a legislative intent to remove municipal liability no cause of action for securities fraud could be upheld.²¹ The Court found that no such indication existed in the California Corporate Securities Act and granted summary judgment in favor of defendants.²²

This Comment explores the potential effects of the Ninth Circuit finding that California municipalities are immune from state causes of action for securities fraud. Part II describes the factual background of *Nuveen Municipal High Income Opportunity Fund v. City of Alameda*.²³ Part III sets forth the Ninth Circuit’s reasoning. Part IV examines the value of a state cause of action for securities fraud, the financial repercussions of the court’s decision, and the steps that the California legislature and California Supreme Court can take to counteract the Ninth Circuit’s holding. Part V concludes that California’s economy only stands to suffer from the Ninth Circuit’s holding, and that the California legislature or California Supreme Court should rectify the Ninth Circuit’s holding.

II. STATEMENT OF THE CASE

In the late 1990s, the City of Alameda (“Alameda”) decided to include telecommunications—cable TV and Internet—as part of its municipal electrical system.²⁴ APT sought to borrow a significant portion of the capital needed to fund this project, so it issued revenue bond anticipation notes in the amount of \$33 million.²⁵

Relying on the official statement prepared by a municipal bond underwriter, Stone & Youngberg, and a feasibility report on the

19. CAL. CORP. CODE § 25013 (West 2014); *id.* § 25400; *id.* § 818.2.

20. *Nuveen*, 730 F.3d at 1115.

21. *Id.* at 1126–27.

22. *Id.* at 1127.

23. *Id.* at 1116–18.

24. *Id.* at 1116.

25. *Id.*

proposed refinancing prepared by Uptown Services, Nuveen purchased \$17.75 million in face value of the notes.²⁶ Nuveen later purchased an additional \$2.8 million for a total face value of \$20.55 million.²⁷

The official statement disclosed certain risk factors affecting the viability of the system.²⁸ Among those factors disclosed was the risk of competition from other service providers, including Comcast.²⁹ While the official statement suggested that the telecommunications system could be a strong competitor in the field, it specifically stated that no assurances could be made in the notes or in any future financing that APT may need to repay the notes.³⁰

The feasibility report, included as part of the official statement, relied on information provided by APT, which included a five-year financial forecast and subscriber and financial growth projections.³¹

To compensate for the risks assumed, the notes offered an interest rate of 7 percent, with a yield to maturity at 7.25 percent, nearly double that of a typical tax-free municipal bond in 2004.³² Three sources secured repayment of the notes on June 1, 2009, including: (1) net revenue from the telecom system; (2) a potential refinancing of the system prior to maturity; and (3) proceeds from the sale of the system.³³

Due to fierce competition with Comcast and the sharp economic downturn in 2007 and 2008, APT could not repay the notes from the system's revenue, and refinancing was no longer an option.³⁴ In November 2008, Alameda decided to sell the system to Comcast for \$15 million.³⁵ Although Nuveen received more than \$6 million in interest payments on the notes, it sustained losses of more than \$10 million on the notes.³⁶

Attempting to rectify its losses, Nuveen sued the City of Alameda "for alleged violations of Section 10b-5 and Section 20(a)

26. *Id.* at 1115, 1117.

27. *Id.* at 1117.

28. *Id.* at 1116.

29. *Id.*

30. *Id.*

31. *Id.* at 1116–17.

32. *Id.* at 1116.

33. *Id.* at 1117.

34. *Id.*

35. *Id.*

36. *Id.*

of the Securities Exchange Act of 1934 and California Corporate Securities Act [sections] 24000, 25500, and 25504.1.”³⁷ “Nuveen argue[s] that the official statement contained inflated and unrealistic projections that materially overstated the telecom system’s anticipated performance.”³⁸ Nuveen alleged that Alameda’s misrepresentations fraudulently induced Nuveen to purchase the notes.³⁹

Nuveen introduced expert testimony that the projections of the official statement relied on outdated information.⁴⁰ Nuveen’s expert further testified that the outdated information “artificially increased the expected [average revenue per unit] and number of subscribers in the subsequent five years.”⁴¹ Nuveen’s expert also explained “that ten days before the issuance of the official statement, the Alameda Public Utilities Board adopted a five-year business plan for Alameda Power that used significantly less optimistic projections for Alameda Power Cable’s future financial performance than the projections in the Official Statement.”⁴²

Alameda eventually moved for summary judgment on both the federal and state claims.⁴³ The district court granted Alameda’s motion and held that Nuveen could not establish a triable issue as to loss causation on the federal claims, and that Alameda was immune from suit under California law on the state law claims.⁴⁴ Nuveen appealed summary judgment.⁴⁵

III. REASONING OF THE COURT

The Ninth Circuit upheld the district court’s decision in its entirety.⁴⁶ In doing so, the Ninth Circuit rejected Nuveen’s contention that loss causation could be shown by demonstrating that they would not have purchased the notes “but for” Alameda’s fraudulent misrepresentations.⁴⁷ The court followed the United States

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 1118.

43. *Id.* at 1117.

44. *Id.* at 1118–20.

45. *Id.* at 1118.

46. *Id.* at 1128.

47. *Id.* at 1121.

Supreme Court's reasoning in *Dura Pharmaceuticals, Inc. v. Broudo*⁴⁸ that loss causation and transactional causation are two separate requirements.⁴⁹ Transactional causation is satisfied by showing that the injury would not have occurred but for the defendant's misrepresentations.⁵⁰ Loss causation, on the other hand, requires that there be a causal link between the plaintiff's injuries and the misrepresentation.⁵¹ The misrepresentation must be the cause-in-fact of the injuries alleged by the plaintiff.⁵² The court concluded that Nuveen had in fact failed to establish a triable issue of fact as to loss causation.⁵³

The court then turned to Nuveen's state law claims for violations of the California Corporate Securities Act.⁵⁴ The court recognized that the Corporate Securities Act imposes liability on "any person" who willfully makes a false or misleading material statement for the purpose of inducing the sale of a security."⁵⁵ "The [Act] defines 'person' to include 'a government, or a political subdivision of a government.'"⁵⁶ However, the California Tort Claims Act of 1963, currently known as the Government Claims Act, provides immunity to public entities "[e]xcept as otherwise provided by statute."⁵⁷ Section 818.8 specifically provides immunity where an injury is caused by a negligent or intentional misrepresentation of an employee of a public entity.⁵⁸

Despite Nuveen's arguments to the contrary, the court concluded that Alameda was in fact immune from suit for violations of the Corporate Securities Act.⁵⁹ In doing so, the court drew upon the California Supreme Court's reasoning in *Caldwell v. Montoya*.⁶⁰

In *Caldwell*, the court considered whether public employees were liable for discretionary acts that allegedly violated the state's

48. 544 U.S. 336 (2005).

49. *Id.* at 1116.

50. *Id.* at 1118.

51. *Id.* at 1119.

52. *Id.*

53. *Id.* at 1123.

54. *Id.* at 1124.

55. *Id.* (citing CAL. CORP. CODE §§ 25400, 25500 (West 1969)).

56. *Id.* (citing CAL. GOV'T. CODE § 25013 (West 1994)).

57. *Id.* (citing CAL. GOV'T CODE § 815 (West 1963)).

58. *Id.*

59. *Id.* at 1127.

60. 897 P.2d 1320 (Cal. 1995); *Nuveen*, 730 F.3d at 1125.

Fair Employment and Housing Act (FEHA).⁶¹ The court ultimately concluded that the general duty imposed on public employees under the FEHA did not override immunity for discretionary acts provided by section 820.2 of the California Government Code.⁶² The California Supreme Court opined, “The intent of the [Government Claims Act] is not to expand the rights of plaintiffs in suits against government entities [or employees], but to confine potential governmental liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the [A]ct are satisfied.”⁶³

Ultimately, the California Supreme Court held that statutory immunity could only be withheld where there exists a clear indication of legislative intent that such immunity be withheld or withdrawn.⁶⁴ In other words, the statute must clearly withdraw statutory immunity.⁶⁵

The Ninth Circuit went on to reject Nuveen’s contention that *DeJung v. Superior Court*⁶⁶ governed this dispute, reasoning that the employer had no basis for invoking immunity.⁶⁷ The Court ultimately concluded that because the California Corporate Securities Act did not override the Government Claims Act, Alameda properly invoked immunity against Nuveen’s claims.⁶⁸ The district court properly granted summary judgment on the Nuveen’s state-law claims.⁶⁹

IV. ANALYSIS

The Ninth Circuit’s holding may trouble California municipal bond investors. After *Nuveen*, municipalities can, in essence, defraud investors. California law leaves those investors without a state-law remedy.

However, investors may not be the only ones affected by the court’s ruling. Investors’ reactions to the Ninth Circuit’s holding may

61. *Caldwell*, 897 P.2d at 1322.

62. *Id.* at 1323.

63. *Id.* at 1328 (internal quotation marks omitted).

64. *Id.* at 1331.

65. *Nuveen*, 730 F.3d at 1125.

66. 87 Cal. Rptr. 3d 99 (Ct. App. 2008).

67. *Nuveen*, 730 F.3d at 1127.

68. *Id.*

69. *Id.*

create problems for municipalities seeking to borrow funds for public infrastructure projects—that is, schools, highways, or public facilities.⁷⁰ With California as the largest municipal borrower in the United States,⁷¹ the federal and other state governments may experience financial shocks flowing from the Court's decision.

Despite these disconcerting effects, the California legislature or the California Supreme Court can restore the state-law remedy eradicated by the Ninth Circuit's holding. This part explores the effects likely to flow from the court's decision and why California should take prompt action to return to investors a state-law remedy for municipalities' misrepresentations.

*A. State v. Federal Securities Laws:
Does the Court's Ruling Make a Difference?*

To establish a claim for securities fraud under federal law, a plaintiff must establish: (1) a material misrepresentation or omission; (2) scienter; (3) connection with the purchase or sale of a security; (4) reliance, often referred to as transaction causation; (5) economic loss; and (6) loss causation.⁷²

Similarly, section 25400 of the California Corporations Code states:

It is unlawful for any person, directly or indirectly, in this state . . . to make, for the purpose of inducing the purchase or sale of such security by others, any statement which was . . . false or misleading with respect to any material fact, or which omitted to state any material fact necessary in order to make the statements made . . . not misleading, and which he knew or had reasonable ground to believe was so false or misleading.⁷³

Under California law, plaintiffs have a lesser burden to satisfy in establishing a cause of action for misrepresentations.⁷⁴ Section 25400 does not require (1) proof of reliance, or (2) proof of causation, although the facts must be material.⁷⁵

70. Randle B. Pollard, *Who's Going to Pick Up the Trash?—Using the Build America Bond Program to Help State and Local Governments' Cash Deficit*, 8 PITT. TAX REV. 171, 180 (2011).

71. Arezki et al., *supra* note 10, at 35–36.

72. *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 341–42 (2005).

73. CAL. CORP. CODE § 25400 (West 2014).

74. WITKIN, *supra* note 6, § 444.

75. *Id.*

In *Nuveen*, this lesser burden would likely have led to a different outcome with regard to Nuveen's state cause of action. The Ninth Circuit granted Alameda's motion for summary judgment because Nuveen had failed to establish a triable issue of fact as to loss causation.⁷⁶ Because causation does not need to be proven under the California Corporate Securities Act, Nuveen would have been able to survive summary judgment.⁷⁷ As a general matter, the California Corporate Securities Act provides relief where the federal securities laws do not.

B. Financial Repercussions

As of 2012, California has the tenth largest economy in the world with a Gross State Product of more than \$2 trillion.⁷⁸ Of that total amount, California collected through taxes during the 2012–13 tax year around \$100 billion.⁷⁹ However, California currently carries more than \$800 billion in financial obligations.⁸⁰ Even though California's financial state has recently improved somewhat, it still maintains the third-lowest credit rating after Illinois and New Jersey.⁸¹

Eradicating municipal liability for misrepresentations in the securities arena may only exacerbate California's already heavy debt problems. As the largest borrower among all fifty states, California relies heavily on bonds to meet its financial obligations.⁸² As a general matter, investors will not assume risks without some promise of a higher return. As the old adage goes: high risk, high return.

The Ninth Circuit's holding in *Nuveen* arguably creates higher risk for bond-purchasing investors. They must run the risk that municipalities will either intentionally or negligently misrepresent an

76. *Nuveen Mun. High Income Opportunity Fund v. City of Alameda*, 730 F.3d 1111, 1123 (9th Cir. 2013).

77. WITKIN, *supra* note 6, § 444.

78. Adam Belz, *Map: GDP of US States Compared to Other Countries*, STAR TRIB. (Feb. 10, 2014), <http://www.startribune.com/blogs/244326311.html>.

79. *Sources of State Taxes*, CAL. STATE CONTROLLER'S OFFICE, http://www.sco.ca.gov/state_finances_101_state_taxes.html (last visited Sept. 12, 2014).

80. William Fletcher & Ed Ring, *Calculating California's Total State and Local Government Debt*, CAL. POLICY CTR. (April 26, 2013), <http://californiapublicpolicycenter.org/calculating-californias-total-state-and-local-government-debt/>.

81. James Nash & Brian Chappatta, *California Upgraded by Moody's to Highest in 13 Years*, BLOOMBERG (June 25, 2014), <http://www.bloomberg.com/news/2014-06-25/moody-s-upgrades-california-to-aa3-on-financial-gains.html>.

82. *Id.* at 36.

investment to the investor's detriment. Thus, it follows that to convince these investors to lend money, California municipalities will have to offer higher interest rates. If the risk is too great, investors may take "flight to quality" bonds from other municipalities.⁸³ With California being the largest municipal borrower, this can have "spillover effects," not only on neighboring states but also on the federal government as a whole.⁸⁴

1. Flight to Quality and Spillover Effects

A recent study explored "whether a shock to the market for bonds of one U.S. state can affect the markets for bonds from other states (a situation known as 'spillover')." ⁸⁵ The study also investigated the effects that state bond markets might have on the market for U.S. Treasury securities.⁸⁶ As a general matter, when a state bond market suffered as borrowing costs increased, investors fled to higher quality, less risky bonds in neighboring states.⁸⁷

Of the few states that could potentially affect federal securities, California falls within that small group.⁸⁸ Yields on California bonds and those on federal securities move "significantly in opposite directions following a shock to both bond markets."⁸⁹ Thus, a shock to the California bond market may lead to increased instability in the Treasury bond market.⁹⁰

2. Increased Interest Rates

The bonds purchased by Nuveen yielded interest rates more than double those of a typical bond.⁹¹ During the life of those bonds, Nuveen was able to recover more than \$6 million.⁹² Despite this generous rate to reflect the risky nature of the bonds, Nuveen still lost millions of dollars.⁹³ The Ninth Circuit's holding makes these

83. *Id.* at 35.

84. *Id.* at 36.

85. *Id.* at 35.

86. *Id.*

87. *Id.*

88. *Id.* at 36.

89. *Id.*

90. *Id.*

91. *Nuveen Mun. High Income Opportunity Fund v. City of Alameda*, 730 F.3d 1111, 1116 (9th Cir. 2013).

92. *Id.* at 1117.

93. *Id.*

bonds even riskier. Investors have no way of knowing whether the information they are using in buying municipal bonds is reliable. To compensate for this new risk, investors will need to demand a higher rate of interest.⁹⁴ This in turn increases the borrowing costs of municipalities, triggering the spillover effects and the flight to quality discussed in the previous section.⁹⁵ Simply, California cannot afford such a result.

C. Resolving the Issue

To resolve the issue created by *Nuveen*, a solution will need to come from either the California legislature or the California Supreme Court. The Ninth Circuit explained in its decision what the California Securities Act lacked: clear intent to withdraw immunity.⁹⁶

1. Legislative Relief

At this point, it is not enough for a statute to merely state that a municipality may be liable.⁹⁷ The California Corporation Act did that already.⁹⁸ The California Supreme Court's reasoning in *Caldwell* is instructive as to why clear withdrawal of immunity is necessary. In interpreting the phrase "[e]xcept as otherwise provided by statute," the *Caldwell* court reasoned, "The intent of the [Act] is not to expand the rights of plaintiffs in suits against government entities [or employees], but to confine potential government liability to rigidly delineated circumstances: immunity is waived only if the various requirements of the [Act] are satisfied."⁹⁹ The California Supreme Court went on to explain that:

When addressing the Act's application, we have consistently regarded actionable duty and statutory immunity as separate issues, holding that in general, an immunity provision need not even be considered until it is determined that a cause of action would otherwise lie against the public employee or entity. This analytical treatment arises from our recognition that the question of

94. Pollard, *supra* note 70, at 193.

95. *Id.*

96. *Nuveen*, 730 F.3d at 1126.

97. *Id.*

98. CAL. CORP. CODE § 25400 (West 2014); *id.* § 25013.

99. *Caldwell v. Montoya*, 897 P.2d 1320, 1328 (Cal. 1995) (alterations in original) (citations omitted) (internal quotation marks omitted).

[actionable] duty is only a threshold issue, *beyond which remain the immunity barriers*.¹⁰⁰

The Ninth Circuit understood this to mean that a statute cannot merely impose liability, for that would only satisfy the question of actionable duty.¹⁰¹ Rather, a statute must also expressly withdraw immunity to clear the “immunity barriers.”¹⁰² Therefore, to properly amend the California Securities Act, the California legislature must understand that clearly stating liability is insufficient; rather, an amendment to the act must expressly withhold immunity.¹⁰³

2. Legislative or Judicial Relief

Alternatively, the Ninth Circuit and the California Supreme Court identified another avenue by which the California legislature might clearly indicate an intent to remove statutory immunity: where the statute’s purpose is clearly intended to address an issue specific to the government.¹⁰⁴ The *Caldwell* court turned to whistle-blower statutes as a quintessential example of such statutes.¹⁰⁵

In a lengthy footnote, the California Supreme Court noted a court of appeal decision, *Southern California Rapid Transit District v. Superior Court*.¹⁰⁶ There, the court of appeal determined that a suit for wrongful discharge under a whistle-blower statute could not be defended on grounds of governmental immunity.¹⁰⁷ In light of this case, the *Caldwell* court concluded:

Insofar as such whistleblower statutes focus in particular on those who act to suppress or punish revelations of fraud, corruption, or illegality in government business, the core statutory objectives might well be obviated by a conclusion that cover-up efforts by a public official are eligible for immunity. By their specific nature and purpose, such laws may indeed provide a clear indication of intent that the

100. *Id.* at 1328–29 (alterations in original) (emphasis added) (internal quotation marks omitted).

101. *Nuveen*, 730 F.3d at 1126.

102. *Caldwell*, 897 P.2d at 1329.

103. *Nuveen*, 730 F.3d at 1126.

104. *Id.*

105. *Caldwell*, 897 P.2d at 1329–30 n.7.

106. *Id.*; 36 Cal. Rptr. 2d 665 (Ct. App. 1994).

107. *S. Cal. Rapid Transit Dist. v. Superior Court*, 36 Cal. Rptr. 2d 665, 676 (1994).

personal immunities of public employees are abrogated.¹⁰⁸

Under this rationale, the Ninth Circuit might have withheld immunity from Alameda on policy grounds where the core statutory objective might be obviated by making municipalities eligible for immunity. The purpose in enacting the California Securities Act was “to protect the public against the imposition of unsubstantial, unlawful and fraudulent stock and investment schemes and the securities based thereon.”¹⁰⁹ Thus, the California legislature can either clarify the purpose of the California Securities Act, or the California Supreme Court can review this issue and conclude on policy grounds that municipalities frustrate “core statutory objectives” when they claim immunity from securities fraud liability.

In sum, the potential effects of the Ninth Circuit’s holding may be avoided by the California legislature amending the securities laws to reflect a clear indication of withdrawing statutory immunity. Moreover, either the California Supreme Court can hold on policy grounds that the Ninth Circuit’s holding would frustrate the core statutory objectives of the California Securities Laws, or the California legislature can provide a clear indication through the statutory purpose. Without the intervention of these two branches of government, investors will be at a loss for a state cause of action and will be forced to turn to the federal securities laws for redress.

V. CONCLUSION

As California faces troubling times ahead, increased borrowing costs will only exacerbate the state’s growing financial problems. The California state cause of action against misrepresentation plays a unique role independent from the federal securities law against securities fraud. Unless the California legislature or California Supreme Court clarify the intent of the Corporate Securities Act, the potential effects may harm not only the fragile economic circumstances in California, but may spillover and affect the United States as a whole. For the policy reasons discussed in this Comment, immunity from liability in the securities context will only harm California municipalities and the people they represent.

108. *Caldwell*, 897 P.2d at 1330 n.7.

109. *People v. Syde*, 235 P.2d 601, 603 (Cal. 1951).

